CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 840/1994.

Date of Decision: 18/8/98

R. D. Bagul, Petitioner/s

Shri D. V. Gangal, Advocate for the Petitioner/s

V/s.

Union Of India & 2 Others, Respondent/s

Shri R. R. Shetty, Advocate for the Respondent/s

CORAM:

Hon'ble Shri Justice R. G. Vaidyanatha, Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 840/94.

Dated the 18 day of August, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA, VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

R. D. Bagul,
Retired Booking Clerk,
Central Railway,
Pimpalgaon.

Residing at -
C/o. Municipal Dispensary,
Pachora,
Dist. Jalgaon - 424 201. ... Applicant

(By Advocate Shri D.V. Gangal)

VERSUS

1. Union Of India through
The Secretary,
Ministry Of Railway,
Railway Board,
New Delhi.

2. The General Manager,
Central Railway,
Bombay V.T., Bombay.

3. The Divisional Railway
Manager,
Central Railway,
Bhusawal. ... Respondents.

(By Advocate Shri R. R. Shetty).

: ORDER :

PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN

This is an application filed under Section 19 of the Administrative Tribunals Act. Respondents have filed reply. We have heard the Learned Counsels appearing on both sides.

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2. The applicant was working in Railways as a Commercial Clerk from 17.11.1941. During 1965-66 he was transferred to Itarsi. He could not go on transfer due to his personal difficulties. He therefore resigned his job w.e.f. 31.03.1966. Then he went on making representation, seeking for a job again. Ultimately, the Railways granted his request by an order dated 17.11.1971 by taking the applicant as a new entrant at bottom seniority in the new scale of Rs. 260-430. The applicant joined the service again as per this order on 01.01.1972. He attained superannuation and retired from service on 30.06.1980. The applicant's grievance is that, he is not given the benefit of the previous service for the purpose of qualifying service for getting pension. In the Railway Rules, there is a provision for condoning the break of service, provided the break does not exceed 12 months. The applicant's first spell of service was not pensionable but it was covered by the Provident Fund Scheme. But the second spell of service was a regular pensionary service. In the second spell of service, the applicant had put in only 8½ years of service and he is not entitled for pension. It is further stated that the applicant was again re-employed from 02.08.1980 to 31.07.1982 on daily wages. Even the benefit of this service of nearly two years, was not given to the applicant as qualifying service for the purpose of pension. The applicant is entitled to condonation for the break of service in the three spells of service mentioned above. It is admitted that the applicant received settlement dues in respect of the first two spells of service. He is prepared and willing to refund the benefit of ~~pension~~ P.F. which he received for the first spell of service if he is now granted pension. The provisions of Rules 426 and

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427 of the Railway Pension Manual and Rules 1307 and 1308 of the Indian Railway Establishment Manual which put restrictions on the power of granting condonation to break of service are ultra vires of the Constitution, and ~~their~~ pension cannot be denied by such restrictions which are contrary to law and contrary to Articles 14 and 16 of the Constitution of India. The applicant filed previous O.A. No. 237/91 which came to be disposed of by Order dated 08.04.1992 giving a direction to the respondents to consider the case of the applicant for condoning the break in service. Now the respondents have given a reply dated 20.01.1994 declining to grant condonation in break of service. This order is arbitrary and illegal and is liable to be set aside. Hence, the applicant has approached this Tribunal praying for setting aside the order dated 20.01.1994, for a declaration that the period from 17.03.1966 to 01.01.1972 should be condoned by treating it as dies-non, for a declaration that Rule 426 and 427 of the Manual of Railway Pension and Rules 1307 and 1308 of the Indian Railway Establishment Manual as null and void being violative of Articles 14 and 16 of the Constitution and for a declaration that the applicant is entitled to pensionary benefits.

3. Respondents have filed reply opposing the application. It is pleaded that the application is barred by principles of resjudicatta, since the applicant had filed previous O.A. on identical grounds and for identical reliefs and no relief was granted to the applicant in the previous O.A.

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As far as the impugned order declining to grant condonation of break in service is concerned, it is stated that the order is passed as per the existing rules, which clearly provides that no break in service can be condoned when the break between two spells of service is more than one year. It is stated that the rules which are challenged by the applicant are perfectly valid and justified, that the applicant is not entitled to the benefit of first spell of service since that service stands forfeited by virtue of applicant's resignation. It cannot be combined with the fresh service which was given to the applicant as a new entrant. The applicant has received the settlement dues at the time of resignation at the end of first spell of service. At that time, the applicant was only covered by the Provident Fund Scheme and was not covered by Pensionable Scheme. As far as the third spell of service is concerned, it is stated that it was not a regular service at all. Further, it was given on daily wages and that too, after superannuation. Therefore, it cannot be clubbed with the previous service. That the applicant is not entitled to any of the reliefs prayed for.

4. The Learned Counsel for the applicant contended that the relevant rules, both in the Pension Manual and the Railway Establishment Manual, are ultra vires of the Constitution and are liable to be struck down. Then he submitted that the respondents should be directed to condone the break in service between the two spells of service and the applicant should be given the benefit of first spell of service as qualifying service for the

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purpose of pension. The Learned Counsel for the respondents contended that the present application is barred by the principles of resjudicatta. That on merits, it is stated that the respondents have considered and rejected the claim of the applicant for condonation of break in service as per rules and, therefore, there is no illegality to call for interference by this Tribunal.

No arguments were addressed by the Learned Counsel for the applicant regarding the subsequent third spell of service from 02.08.1980 to 11.07.1982. Admittedly, during this period, the applicant was engaged on daily wages at the rate of Rs. 15/- per day and, therefore, it was not a regular service. Further, this service is subsequent to the applicant retiring on superannuation. Hence, any subsequent service after superannuation cannot be considered for the purpose of granting pension. Further, it is not a regular service but only service on casual basis on daily wages. Anyhow, we need not go into this question in detail, since the Learned Counsel for the applicant did not address any argument on this third spell of service.

5. In the light of the argument addressed before us, the points which fall for determination are :-

(i) Whether the relevant railway rules mentioned in the application are illegal or ultra vires of the constitution?

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(ii) Whether the applicant is entitled to the benefit of past service from 17.11.1941 to 31.03.1966 as qualifying service for the purpose of getting pension?

(iii) What order ?

6. POINT NO.(i) :

Except asserting that the rules are violative of Article 14 of the Constitution of India, no grounds are made out as to how the relevant rules, namely - Rules 426 and 427 of the Manual of Railway Pension and Rules 1307 and 1308 of Indian Railway Establishment Manual are null and void and in violation of Article 14 of the Constitution of India. Here also we need not go into this question, since it is covered by the previous judgement. We have secured the file of previous O.A. No. 237/91 and there also identical grounds were taken by the applicant challenging these rules as ultra vires of the Constitution. Even in that case, there was a specific prayer to declare these rules as ultra-vires of the Constitution in prayer clause (c) of para 8 of the O.A. The Tribunal observed in the order dated 08.04.1992 that the O.A. has no merit and liable to be dismissed on legal points. However, an observation was made that the Central Government may consider the question of break in service as per rules. Since identical prayers were made in the previous O.A. and the Tribunal has mentioned that no case was made out and the application is liable to be dismissed, the applicant cannot again raise identical grounds in the present O.A. Therefore, our considered view is that, many of the reliefs in the present O.A., including the

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challenge to constitutional virus of the relevant rules are barred by the principles of resjudicatta, since same grounds were taken in the previous O.A. and the Tribunal came to the conclusion that there was no merit in the O.A. and it is liable to be dismissed. Hence, the applicant cannot re-agitate the same point once again. For these reasons, we hold that Point No. (i) cannot be re-agitated and it is barred by principles of resjudicatta.

7. POINT NO. (ii) :

The first spell of service was admittedly not a pensionable service. The first spell of service was covered by Provident Fund Scheme. The second spell of service is covered by Pension Scheme. Therefore, strictly speaking, the first spell of service cannot be clubbed with the second spell of service for the purpose of qualifying service for pension. It is also not disputed tha the applicant has received the provident fund and other service benefits when he resigned from the first spell of service in 1966.

According to Rule 426 of Manual of Pension Rules, 1950, resignation entails forfeiture of past qualifying service. Therefore, the normal rule is, when a person resigns his job, his past service is forfeited. Therefore, under the normal circumstances, the applicant cannot have the benefit of past service in continuation of the second speall of service. But however, Rule 427 of Manual of Pension Rules provides for condonation of break in service. Then Rule 428 provides that the conditions for condonation

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of break in service under Rule 427 applies to resignation, etc. Therefore, by a conjoined reading of Rule 427 and Rule 428 we can hold that even in case of resignation, the break in service can be condoned by the competent authority subject to sub-clause (iii) of Rule 427. Rule 427 (iii) provides for condonation of break in service subject to three conditions. For the moment, we are concerned with the third condition, namely - sub caluse (iii)(c) which reads as follows :-

> "(c) The break should not of be more than one years' duration. In cases where there are two or more breaks, the total of the periods of all breaks that are condoned should not exceed one year."

In the present case, the applicant's first spell of service came to an end by resignation on 31.03.1966 when the applicant left the job after resignation. Now the second spell of service commenced from 01.01.1972. Therefore, the period of break between the two spells of service is about five years and odd from March 1966 to January 1972. Now we have already seen that the relevant clause in Rule 427 is that the period of break between two spells of service should not exceed more than one year. Here the period of break is more than five years and at any rate, it is not within the statutory limit of one year as provided in Rule 427. If by applying this rule, the Railway Administration says that the break cannot be condoned, how can this Tribunal interfere and direct the respondents to condone the break contrary to the statutory mandate. This Tribunal can interfere if the administration has done anything contrary to law. Here, what the administration has done is, they have rejected the claim of the applicant on the ground that his claim is contrary to law and therefore, delay cannot be condoned. This

Tribunal cannot direct the Railway Administration to do something which is prohibited by the statutory rules. If we now direct the respondents to condone the break, though it is of five years, then we will be directing the Railway Administration to disobey the statutory mandate in Rule 427 where there is a clear prohibition to condone any delay if the period of break is more than one year. In our view, that cannot be done by this Tribunal. Therefore, the claim of the applicant for a direction to the Railway Administration to do something contrary to law, the said claim is liable to be rejected.

8. The Learned Counsel for the applicant placed strong reliance on an unreported judgement dated 04.09.1991 of the Supreme Court in Civil Appeal No. 3497 of 1991 (R. T. Lynch V/s. Union Of India & Another). That was a case where the appellant before the Supreme Court had been removed from service after following the disciplinary enquiry. However, on representation made by him, he was called back to work in 1968 and he retired in 1987. Since there was break in service, it affected the appellant's right to pension. The Supreme Court observed as follows :-

> "Whatever may be the reason for his re-employment, the employer-respondent obviously condoned the lapses to call him back to duty and it is a usual relief available in these circumstances to give continuity of service for purposes of pension."

Therefore, it is seen that on the facts and circumstances of that case, the Supreme Court granted the appellant's request to treat the period of break as continuity in service to get pension. It is a short judgement given by the Supreme Court. The Supreme Court has not considered the provisions of Railway Pension Manual or any other

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railway rules. The Supreme Court has not laid down any proposition to law that even if there is a break in service for more than one year, the administration has to condone under Rule 427. The Supreme Court has not interpreted any provision of law or rules while granting relief in that case. In our view, it was a case where on the facts and circumstances of that case, the Supreme Court was inclined to grant the relief of pension to the applicant.

To satisfy and particularly on the submission made by the Learned Counsel for the applicant, we secured the file - TR 248/86, from which the matter went to the Supreme Court and resulted in the unreported judgement mentioned above. The applicant in that case had been removed from service by following disciplinary enquiry. Then he filed a suit in the Court of the Civil Judge challenging the order of punishment on the ground that there was no proper enquiry, violation of principles of natural justice, etc. There was no prayer for pension, much less for condonation of break in service. That was a simple case of the applicant challenging the order of punishment in a disciplinary enquiry case. But the suit came to be dismissed on the ground of limitation. Then an appeal was filed before the Competent Court which came to be transferred to this Tribunal in view of the provisions of Administrative Tribunals Act. Even this Tribunal confirmed the order of dismissal of suit on the ground of limitation. We have perused the judgement of the ~~High~~ Tribunal Court, judgement of this Tribunal and there

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was no question of any ~~leading~~ pleading or prayer or submission regarding the applicant's right to pension and for condonation of break in service. Infact, the applicant's case was that, though he has been removed from service, he was making representations to the administration to take him back and since the administration was satisfied that the whole proceedings were defective, ~~and~~ it took him back. That is why the question pressed before the Supreme Court was about the right of the applicant to pension. In those circumstances, the Supreme Court observed that the applicant is taken back into service and the department has condoned the break in service. Therefore, it is a case where the Supreme Court has granted relief on the peculiar facts and circumstances of the case by exercising its plenary power under Article 142. That was not a decision given on the basis of interpretation of Rule 427 or any other law on the point.

We must bear in mind that under Article 142 of the Constitution of India, the Supreme Court has unlimited and very wide jurisdiction and power to pass any order that is necessary for doing complete justice in any case. If the Supreme Court interpreted any provision to law or expressed any opinion on any question of law, it will be the law of the land and binding on everybody, as provided under Article 141 of the Constitution of India. But if the Supreme Court in its wisdom and discretion gives reliefs to parties under its plenary powers, other sub-ordinate Courts cannot give similar reliefs to other parties who approach them. We are fortified in our view by the observations of the Supreme Court itself in the case of State of Punjab & Others V/s. Surinder Kumar and Others [1992 (1) SLR 335]. In that case, the High Court had allowed the writ petition filed by the parties

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with a direction to the Government that the parties who are appointed on part-time basis should be continued until regular appointments are made. The Supreme Court noticed that the order of the High Court was not legally sustainable. Then the respondents' Counsel in the Supreme Court submitted that the High Court gave such a direction since in number of cases the Supreme Court had given such directions. The Supreme Court observed that the High Court cannot do this unless it can give reasons in support of the order. This is what the Supreme Court has observed in para 6 of the reported judgement at page 337 which reads as follows :-

> "A decision is available as a precedent only if it decides a question of law. The respondents are, therefore, not entitled to rely upon an order of this Court which directs a temporary employee to be regularised in his service without assigning reasons. It has to be presumed that for special grounds which must have been available to the temporary employees in those cases, they were entitled to the relief granted. Merely because grounds are not mentioned in a judgement of this Court, it cannot be understood to have been passed without an adequate legal basis therefor. On the question of the requirement to assign reasons for an order, a distinction has to be kept in mind between a court whose judgement is not subject to further appeal and other courts. One of the main reasons for disclosing and discussing the grounds in support of a judgement is to enable a higher court to examine the same in case of a challenge. It is, of course, desirable to assign reasons for every order or judgement, but the requirement is not imperative in the case of this Court. It is, therefore, futile to suggest that if this Court has issued an order which apparently seems to be similar

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> to the impugned order, the High Court can also do so. There is still another reason why the High Court cannot be equated with this Court. The Constitution has, by Article 142, empowered the Supreme Court to make such orders as may be necessary "for doing complete justice in any case or matter pending before it", which authority the High Court does not enjoy. The jurisdiction of the High Court, while dealing with a writ petition, is circumscribed by the limitations discussed and declared by the Judicial decisions, and it cannot transgress the limits on the basis of whims or subjective sense of justice varying from Judge to Judge."
> (Underlining is ours).

From the above observations of the Supreme Court it is quite clear that the High Court had its own limitation in passing order in the case and it cannot pass an order unless it records reasons in support of its judgement. It is further observed that the Supreme Court has wide power to pass any orders and even without giving any reasons under Article 142. But such a power cannot be exercised by the High Court or other Courts.

In the present case, we cannot give any reason to set aside the order of the administration. When the order of the administration is according to rule, how can we say that the order of the administration rejecting the claim of the applicant is not correct or illegal, etc. The order passed by the respondents is perfectly within the four corners of Rule 427. Therefore, we cannot give any reason to set aside that order. As observed by the Supreme Court in the above case, we have our own limitations to pass orders within the four corners of law.

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Therefore, the applicant cannot get any assistance from the unreported judgement mentioned above, since it was a discretionary order passed by the Supreme Court under its plenary powers and this Tribunal does not have such powers and therefore, this Tribunal cannot pass any order in favour of the applicant contrary to the statutory mandate under Rule 427 of the Pension Manual.

Therefore, in our view, the claim made by the applicant for condonation of break in service is not sustainable in law in view of the statutory provisions mentioned above and, therefore, the applicant is not entitled to get any relief at the hands of this Tribunal.

9. In the result, the O.A. is dismissed. There will be no order as to costs.

(D. S. BAWEJA)
MEMBER(A).

18/8/98
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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